

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

J U D G M E N T

- (1) D. B. CRIMINAL APPEAL NO. 46/87
(Gida Ram & Another v. The State of Rajasthan)
- (2) D. B. CRIMINAL APPEAL NO.53/87
(Shivra Ram v. The State of Rajasthan)

Under Section 374 (2), Cr.P.C., against
the Judgment dated 07.02.1987 ,
passed by Shri R.S.Verma, the learned
Sessions Judge, Jodhpur, in Sessions
Case No.86/85.

DATE OF JUDGMENT :::: SEPTEMBER 07, 2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. Mahesh Bora) for Appellants.
Mr. M.K.Garg)
Mr. J.P.S.Choudhary, Public Prosecutor.
Mr.J.S.Choudhary, for Complainant.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

Aggrieved by the judgment dated 7th February, 1987, passed by the learned District & Sessions Judge, Jodhpur, in Sessions Case 86/85, these two appeals have been preferred by appellants – Gida Ram, Har Sukh Ram and Shivra Ram. Since both the appeals arise out of common judgment/order, thus they were heard together and decided by common Judgment.

Complainant – Ramji Ram lodged an F.I.R. in Police Station, Bhopalgarh on 27.05.1985, at 2.15 P.M., wherein it was stated that his son Mana Ram is missing for the last six months as he has not returned back from 'Asop Pashu Mela'. Said Mana Ram was searched throughout, but he was not found. However, during the course of search, one Gaina Ram informed that he had seen Mana Ram in 'Asop Pashu Mela' along with Shivra Ram, Gida Ram and Harsukh Ram. They all remained together in the evening and, thereafter, all the five visited Gida Ram's house, where they had taken tea. Gaina Ram, thereafter, left the place, leaving Mana Ram with three accused. The complainant further stated that he received three unknown letters, giving out that Mana Ram is behind bars in Central Jail, Chittor. They visited Central Jail, Chittor but, there also, Mana Ram was not found, hence he got more suspicious. On 26.05.1985, Pira Ram informed that Mana Ram was killed by Shivra Ram, Gida Ram and Harsukh Ram and his dead body is concealed in Gida Ram's house. On receipt of information, when he visited Shivra Ram,

Gida Ram and Harsukh Ram at their residence, then none was found in the village. Thus, he became sure that all the three accused have killed Mana Ram. When Mana Ram left the place for 'Asop Pashu Mela', he was wearing 'Dhoti' and shirt. An HMT "Sona" watch was lying on his wrist and he had gone on cycle to visit 'Asop Pashu Mela'.

The First Information Report was, thereafter, registered under Sections 302, 201/34 of IPC, being FIR No. 57/85. The Police conducted usual investigation in the matter and, thereafter, filed challan under Section 302 and Section 201, IPC, before the Munsif & Judicial Magistrate, Pipar city, from where the matter was committed to the Committal Court. The trial Court, thereafter, framed charges against the accused under Sections 302, 302/34 and 201 of IPC. Charge was read over to the accused, who denied charge and claimed trial.

At the trial, prosecution produced twenty-six witnesses and exhibited forty-six documents, whereas, in defence, statement of Smt. Radha was recorded as D.W.1 and six documents were produced by the defence. Statements of the accused were recorded under Section 313 of Cr.P.C.

The learned trial Court, thereafter, convicted three accused under Sections 302/34 and 201 of IPC. All the three accused were accordingly sentenced to life imprisonment and penalty of Rs.100/- each, in default to serve three months rigorous

imprisonment for conviction under Section 302 of IPC. The three accused were further sentenced with one year's rigorous imprisonment and penalty of Rs.50/- each, in default to serve one month's rigorous imprisonment, for their conviction under Section 201, IPC. Both the sentences were ordered to run concurrently.

Learned counsel appearing for the appellants urged that it was a case where FIR was lodged after a period of six months stating that Mana Ram is missing and as per information, killed by accused. There is no eye witness of the occurrence, the learned trial Court convicted the accused, based on circumstantial evidence, though same was not sufficient to connect accused with crime.

Learned counsel further submitted that there exists contradictions in the statements of prosecution witnesses and even recovery of the body of deceased Mana Ram and his clothes, are totally unreal, despite learned trial Court relied on those recoveries and without following the under-lying principles laid down by the Hon'ble Supreme Court to adjudicate a matter of circumstantial evidence convicted accused. It was, thus, prayed that the judgment of the trial Court deserves to be set aside and the accused be acquitted from the charges.

Per contra, learned Public Prosecutor argued that the learned trial Court has considered each and every aspect of the

matter minutely and it is only thereafter, that finding of guilt of accused was recorded. It was urged that dead body of deceased Mana Ram was recovered at the instance of the accused, who was last seen with the accused by Gaina Ram. The circumstantial evidence available on record was sufficient to show chain of circumstances to connect accused with the crime. Therefore, finding of the trial Court calls for no interference. It was thus, prayed that the judgment of the trial Court be affirmed, while rejecting the appeals, preferred by the appellants.

We have carefully perused the record and scanned the matter carefully.

It is a case of circumstantial evidence. Thus, we have to follow principles laid down by the Hon'ble Apex Court. In a recent case of Manjunath Chennabassapa Madalli v.State of Karnataka (JT 2007 (3) SC 550), following principles are laid down for consideration of a case of circumstantial evidence. The Hon'ble Supreme Court held thus :-

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say,

they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possibility hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability he act must have been done by the accused.”

We have taken note of underlying principles laid down by the Hon'ble Supreme Court to adjudge the matter, being a matter of circumstantial evidence.

The present case was started with lodging of FIR by Ramji Ram on 27.05.1985, stating therein that his son Mana Ram is missing for last six months and in view of the information received by him, Mana Ram was killed by three accused, namely, Shivra Ram, Gida Ram and Harsukh Ram. In his statement, Ramji Ram (P.W.7) stated that his son Mana Ram went to 'Asop Pashu Mela' on his cycle, wearing a HMT watch. However, said Mana Ram did not return. Accused have killed his son Mana

Ram as Punaram's elder daughter Sugani was married to Gida Ram, whereas Punaram's younger daughter is married to Mana Ram. Harsukh Ram is son-in-law of his son Mana Ram and Shivra Ram is caste brother of accused Gida Ram. After marriage of Mana Ram, his wife Rampyari often visiting her elder sister Sugani, wife of accused Gida Ram. Mana Ram's wife Rampyari used to talk to Gida Ram and Shivra Ram for hours together and Gida Ram was intent to marry Rampyari with Shivra Ram. Said witness further stated that he had also gone in 'Asop Pashu Mela' on the following day, where he had searched his son Mana Ram, but he was not found there. Somebody informed that accused Mana Ram has gone to his in-laws' place, but he does not know the name of that person who had given such information. When his son Mana Ram did not return, even after 5 – 6 days, then he visited village Rajlani, where he had inquired about his son and there Gaina Ram informed him that Mana Ram was seen by him along with three other persons in 'Asop Pashu Mela'. Names of three persons are Harsukh Raj, Gida Ram and Shivra Ram. Said Gaina Ram further informed that they all five had taken tea in a hotel and, thereafter, Gaina Ram and Mana Ram rode on one cycle, whereas Gida Ram and Harsukh Ram rode on another and Shivra Ram on third cycle. Thereafter, again, all five took tea at Gida Ram's house and, thereafter, Gaina Ram left the place leaving all the three

accused and deceased. Thereafter, said witness kept on searching his son Mana Ram and after a period of 5 – 5.1/2 months, he met Jhumar Ram along with Harsukh Ram from whom witness inquired about his son, but no information could be received. He even visited Chittorgarh Jail, on receipt of three letters containing information that Mana Ram is behind the bars at Central Jail, Chittorgarh, but there also, Mana Ram was not found. Thereafter, he got authentic information about the murder of his son Mana Ram from Pira Ram and, accordingly, FIR was lodged. The dead body of deceased Mana Ram was recovered, after digging a place of Gida Ram's house, where they found a pair of "Jootis". He was asked about those "Jootis", then he immediately identified it to be of his son. The skeleton, so recovered, was having no flesh. However, articles recovered were belonging to Mana Ram which includes recovery of a shirt, a Dhoti and a Baniyan. In the cross-examination, said witness admitted that details of cycle and watch were not given in the report and, at the same time, he was not knowing the date when Gaina Ram met to him. The perusal of cross-examination shows even contradiction therein.

Gaina Ram (P.W.1) stated that he was knowing Mana Ram who met him in 'Asop Pashu Mela', along with the accused. All the five had, thereafter, taken tea at Gida Ram's place and he left the place, leaving deceased Mana Ram with the accused.

After 5 – 10 days, when Mana Ram's father Ramji Ram met him, then informed about Manaram that he has lastly seen Mana Ram along with three accused and it is after hearing rumour of murder of Mana Ram, Ramji Ram asked him to watch Gida Ram's house as he is going to report the matter to the Police. In the cross-examination, said witness stated that he was not knowing about the fact that Mana Ram is missing, even after 8 – 10 days. However, he made a search of Mana ram at village Barni & Chhapla. The witness further stated that he is not making a false statement, being a relative of Ramji Ram. The said witness, however, admitted tht he had gone in 'Asop Pashu Mela' on tractor along with other villagers. This fact was not stated by him earlier.

Pira Ram (P.W.2) stated that he met deceased Mana Ram, almost a year back when he had seen Mana Ram on a cycle. At that time, Mana Ram informed him that he is going to 'Asop Pashu Mela'. After 2 – 3 months, his maternal uncle Ramji Ram met him and informed that Mana Ram is missing. Then, after 10 – 15 days, he met Gaina Ram, who informed that Mana Ram was last seen with the accused. When he was searching for Mana Ram then at Gabrni Bera, certain females were talking about Mana Ram who is said to have been killed by Gida Ram. He had not heard anything else and immediately, he informed this fact to Ramji Ram. Ramji Ram then asked him to watch Gidaram's

house as Ramji Ram proceeded to make a report to the Police. In the night, Gida Ram came and requested him and Pusa Ram that if his name can be taken out, then he informs that he, Shivra Ram and Sukh Ram had killed Mana Ram and his body was concealed in the house. The witness admitted that at the time when they were watching Gida Ram's house, then nobody met to them and it is only Police which had visited the place. The suggestion given to the witness was was not accepted that he is making statement for the reason that he is also relative of Ramji Ram.

Statement of Dr. Dharmendra Sharma was recorded as PW 18 who stated that on 28.05.1985, a Board was constituted, at the request of the SHO, Bhopalgarh. The said Board visited Gida Ram's house, from where the dead body was recovered by digging a place in the house, the body was found in the shape of 'mummy' and in a stale condition, bones were visible at many places and wherever skin was existing, it was found to be hard. According to the said witness, body was having fracture on right parietal temporal and the duration of death was three months to two years. In the cross-examination, the said witness stated that Ex.P-33 contains date of 5th June, 1985 which was explained that at spot they had prepared a rough note. The said witness could not explain as to why delay was caused in preparation of Ex.P-33, i.e., post-mortem report of deceased Mana Ram. The witness

further stated that the dead body was having clothes on it, but he does not remember as to whether it was a pant or a Dhoti. He also does not remember as to whether clothes were containing blood stains and it was only watch belt which was found on the wrist of the deceased. The witness, however, admitted that he has not inquired as to how body was identified by Ramji Ram, whether it was on the basis of clothes or after looking the body. In fact, same was not even informed by any other witness.

PW 19 Karna Ram stated that he was holding the post of SHO on 27.05.1985. The witness admitted that no description of belt on wrist watch was given in the report and details of cycle were also not given.

The learned trial Court considered not only the statements of all the witnesses, but taken into consideration the exhibits produced by the prosecution and, thereafter, came to the conclusion that the prosecution could prove its case beyond doubt and, accordingly, order of conviction was passed. The learned Court mainly considered four circumstances which were found to be sufficient to prove the prosecution case on circumstantial evidence which are as follows :-

(1) Deceased Mana Ram was last seen with three accused by PW 1 Gaina Ram.

(2) Various articles recovered connects them with the

event.

(3) Mana Ram's dead body was recovered from a house which was of the ownership of Gida Ram and was on rent with Shivra Ram.

(4) Accused Gida Ram and Shivra Ram have made extra-judicial confessions.

On the basis of these four circumstances, the learned trial Court connected accused with the crime. The first event which was taken note of by the trial Court was that deceased Mana Ram was seen lastly with the accused, in view of the statement of Gaina Ram. We have considered this event carefully after taking note of the statement of PW 1 Gaina Ram. The witness informed Ramji Ram after five to ten days after Mana Ram found missing that he had seen accused with deceased, however, report to the Police was made after six months, which makes statement to be doubtful. The witness is even in relation of Ramji Ram. The witness admitted that he had gone in "Asop Pashu Mela" in a tractor along with other villagers who unusually left him while going back. The witness even admitted that he belongs to different village than of the deceased. As per statement, he along with three accused and deceased had taken tea on a Hotel but this part of statement was not corroborated by any independent witness despite of visiting

public place like a Hotel by all the five. Even while going to village "Barni" none seen them going together because there is no corroborative evidence available on record. If witness Gaina Ram remained with accused and Mana Ram in "Asop Pashu Mela" where other known villagers were also there, as stated by Gaina Ram then at least some of villagers must have seen them, however no witness was produced to corroborate statement of Gaina Ram, thus it is not safe to rely testimony of this interested witness who is relative of complainant as per statement of Ramji Ram, he was informed about deceased last seen by Gaina Ram only after 5-10 days of missing of Mana Ram, however, witness lodged FIR after six months without explaining the delay, thus it is not found safe to hold that Gaina Ram last seen Mana Ram with accused.

So far as the recovery of articles is concerned, the fact has come on record that deceased Mana Ram was missing for six months and if prosecution story is taken into consideration, then deceased was killed and his body was placed after digging one area of Gida Ram's house when the body was recovered, then as per medical evidence, the same was found, almost in a skeleton condition. But surprisingly, that clothes of the deceased were found to be intact even after six months and thus, recovered by the investigating agency. The learned trial

Court believed such recovery, more so, while body was recovered, wrist watch dial was found missing, but its belt was found on the wrist thus recovered. Again, this is unusual that dial of the watch was taken out, leaving belt intact on the wrist. Such a recovery is again unreal and makes entire investigation to be doubtful. As per the medical evidence, when the body was totally decomposed, it is beyond imagination that the clothes will still remain intact, more so, it remained under the soil for a period of six months. Hence, recovery of articles, in those doubtful circumstances, cannot create any circumstantial evidence against the accused.

The third circumstance taken into consideration by the trial Court was that the dead body of Mana Ram was recovered from Gida Ram's place which was on rent with Dhivra Ram for last one year. This is a fact which elaborately discussed by the trial Court, after taking into consideration recovery of 'Chow' and 'Gainti' which are said to have been used for digging a place in Gida Ram's house. However, according to the learned trial Court, evidence does not prove that those two recovered articles were used for digging a place in Gida Ram's house so as to conceal the dead body. The learned trial Court accepted the fact of crime by three accused, mainly on the ground that the body was recovered from Gida Ram's house, without taking into consideration that even there is contradiction in the statements

of PW 1, PW 6, PW 7, PW 8 and PW 10 along with PW 11 Pema Ram who was Investigating Officer and, according to the learned trial Court, the said Investigating Officer Pema Ram had not conducted himself properly, because while recovering the key of the house of Gida Ram from Jassa Ram, no "Fard" report was prepared and, even it was not noted as to from where said key was recovered, i.e., as to whether it was recovered from Jassa Ram or from Shivra Ram's mother Radha. The trial Court drawn presumption in para 18 of its judgment to hold that as Mana Ram was last seen at Gida Ram's house and the said house was of Gida Ram, hence may it be that accused Shivra Ram had taken it on rent, and also left the home, the circumstantial evidence was yet to be taken into consideration, ignoring the contradiction in the prosecution case, regarding possession of the house and recovery of the key, thus it becomes clear that the learned trial Court ignored all the contradictory evidence existing on record to draw its conclusions, more so, when even identification of body itself is doubtful. Dr. Dharmendra Sharma admitted that he had not asked about the identification of body and the same was not stated by anyone. However, conclusions were drawn on the basis of pair of shoes and clothes, coupled with the belt of wrist watch that it is the body of deceased Mana Ram. Such identification itself is doubtful as when the body was not found in tact, as remained under soil for a period of six

months, how clothes on the body can remain intact. It is also surprising that though belt of wrist watch remained on the hand, its dial was missing, whereas, without dial, belt cannot remain tied on the wrist. This all shows that the investigation is not only defective, but it further shows that the Investigating Authorities have tried to create evidence to connect accused with the crime.

The last event which is taken into consideration by the lower Court is extra-judicial confession made by the accused. For that purposes, statements of witnesses Pira Ram and Pusa Ram were taken into consideration. However, if the statements of these witnesses are taken note of, then it comes out that Pira Ram heard few females talking about killing of deceased Mana Ram by three accused, though those females were not produced in evidence and even not named, however, based on that information, when Pira Ram and Posa Ram watched Gida Ram's house, then Gida Ram made extra-judicial confession. If the fact of extra-judicial confession of Gida Ram is considered in the light of statements of other witnesses, then it comes out that as per the statement of other witnesses, Gida Ram was missing from his residence which was found to be locked, thus presence of Gida Ram has not been disclosed by any other witness, rather as per their statements, Gida Ram and other two witnesses were missing from the village, thus there is a complete contradiction in regard to the presence of Gida Ram on the day when the

extra-judicial confession is said to have been made. However, the learned trial Court has ignored this aspect, more so, if one story of the prosecution is accepted that Gida Ram came at his own, then other part of the story becomes false, i.e., despite of house belonging to Gida Ram, it could not be opened without help of others as the key was not lying there.

In the light of the discussions made above, and after considering the entire material available on record, it seems that not only investigation in the present matter is quite defective, but the effort of the prosecution seems to be to prove its case, even by creating evidence in a matter where occurrence took place, almost six months back and, in those circumstances, the trial Court was required to be very cautious while proving the case based on circumstantial evidence. In view of the recent judgment of the Hon'ble Apex Court in the case *Manjunath Chennabassapa Madalli v. State of Karnataka* (JT 2007 (3) SC 550), the circumstances from which the conclusion of the guilt is to be drawn should not only be established fully, but the circumstances concerned should not be based on "may be established", rather it should "must" and "should be" established. However, in the present case, said principles have not been applied. Looking to the investigation and the material placed by the prosecution before the Court, the circumstantial evidence itself is doubtful hence not safe to rely

such doubtful evidence to prove a case based on circumstantial evidence. In a case of this nature, chain of evidence should be so complete as it may not leave any reasonable ground for conclusion consistent with the innocence of the accused and must show that in all human possibility, the act must have been done by the accused. Looking to the above reasons, we cannot accept the finding recorded by the trial Court and thereby conviction of the three accused and sentence cannot be maintained. Hence, we set aside the judgment of the trial Court.

The appeals are accordingly allowed. The conviction and sentence of the accused under Sections 302/34 and 201, IPC, are set aside. Since all the accused on bail, pursuant to the orders of this Court, hence their bail bonds are ordered to be released.

(MUNISHWAR NATH BHANDARI),J(BHAGWATI PRASAD),J

scd.